

## CHAPTER 17

### HOMEBUYER ASSISTANCE

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#### **Introduction**

This chapter discusses the implementation of CDBG homebuyer assistance programs. Such programs may assist income-eligible homebuyers (program participants) to purchase new or existing homes, and may include any necessary rehabilitation.

#### **Grantee Responsibilities**

You are responsible for meeting all the terms of your contract including complying with applicable environmental, lead-based paint, and labor standards requirements, relocation laws, procurement, and preparing program guidelines (see Chapter 2 for contract requirements).

#### **Program Guidelines**

Your CDBG contract requires that you prepare program guidelines governing your homebuyer assistance program. You will find sample guidelines attached to this chapter. We have also attached the checklist that your CDBG representative will use to review your program guidelines for compliance with CDBG requirements. If you plan to incorporate rehabilitation into your homebuyer program please consult the housing rehabilitation chapter of this manual and include appropriate provisions in your guidelines.

In 1997 CDBG awarded State objective points for homebuyer assistance programs which targeted first-time homebuyers. Therefore, for 1997 contracts only, homebuyer program guidelines must require that program participants be first-time homebuyers, as defined by the local jurisdiction.

#### **Homebuyer File Contents**

Please refer to Chapter 7, Accounting and Recordkeeping, for a list of the required contents of homebuyer files.

#### **Income Verification**

Please refer to Appendix D for information on verifying and documenting program participant income. CDBG funds will normally be used as subordinate gap financing behind a primary loan from a financial institution. The financial institution will determine the homebuyers' income for their purposes, but the CDBG program operator must independently verify and document the participant's income using the criteria found in Appendix D.

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**Lead-Based Paint**

- Program participants purchasing homes constructed prior to 1978 must be provided with notification, by the seller, under the Lead-Based Paint Hazard Reduction Act of 1992. Please refer to the EPA/HUD disclosure Fact Sheet at: <http://www.epa.gov/opptintr/lead/leadbase.htm>
- Whenever pre-1978 houses are rehabilitated under CDBG, please refer to CDBG Regulation 24 CFR 570.608 for lead-based paint-related requirements. These requirements are more stringent if a child under age seven will occupy the home. The costs associated with meeting these requirements are eligible to be paid for with CDBG funds, and should be considered during program design.

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**CDBG Guidelines Checklist**

Please refer to the attached CDBG Checklist for Homebuyer Assistance Program Guidelines which your CDBG Representative will use to review your program guidelines.

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**Sample Guidelines**

We have attached a sample Homebuyer Assistance Program Guidelines. Your CDBG loan limits, terms, and other items may vary from the sample. Attached to these guidelines you will find:

- Annual Household Income Definition/Limits
- Sample Foreclosure Policy
- Sample Implementation Steps
- Sample Acquisition Notice to Seller (Declaration)

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**Persons on Title**

CDBG program policy will allow non-TIG persons who do not reside on the property on title providing the following criteria are met:

- Adequate mechanisms are developed and in place to ensure that the loan is due and payable, or converted to a market rate loan or rented under a recorded rent limitation agreement when the income eligible owner is no longer occupying the unit;
- a mechanism is developed to monitor the unit at least biennially to identify any change in occupancy and/or use; and
- guidelines describing the policy and the mechanisms are included in the program guidelines.

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**Supporting Materials**

- Homebuyer Assistance Program - CDBG Guidelines Checklist
- Homebuyer Assistance Program - Sample Guidelines

## HOMEBUYER ASSISTANCE PROGRAM - CDBG GUIDELINES CHECKLIST

Jurisdiction: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Provisions in Guidelines	Included?
1. Income limits by household size	
2. Maximum amount of CDBG assistance per unit, including description of process for ensuring permanent financing from primary lenders	
3. Maximum purchase price of the property at acquisition	
4. Requirement that properties comply with local code standards at time of purchase	
5. Requirement that acquisition notice containing the items listed below be provided to seller prior to making the purchase offer: a. The purchaser has no power of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable agreement; b. An estimate of the fair market value of the property; and  If an acquisition notice will not be provided prior to the purchase offer, a provision that the seller may withdraw from the agreement after this information is provided.	
6. Either a statement that tenant-occupied properties will not be eligible or a statement that in those cases federal relocation requirements must be met.	
7. Financial terms of the CDBG assistance: a. Assistance is specified as grants or loans, or if either can be used, specifies conditions for making grant vs. Loan; b. Specifies interest rate (if any); and c. Specifies term of the assistance (number of years-may vary depending on amount of assistance).	
8. Income qualification criteria including that Section 8 gross income definition will be used	
9. Description of how households and properties will be selected	
10. Description of inspection procedures and persons responsible for performing them	
11. Description of method of determining amount of CDBG assistance provided to a household	
12. First-time Homebuyer definition (locally-defined-1997 contracts only )	

\_\_\_\_\_  
Signature indicating approval of State CDBG Representative

\_\_\_\_\_  
Date of Approval

Rev. 2/98

## HOMEBUYERS ASSISTANCE PROGRAM - SAMPLE GUIDELINES

### I. APPLICANT ELIGIBILITY

#### A. Conflict of Interest

No member of the governing body of the locality and no other official, employee, or agent of the city government who exercises policy, decision-making functions, or responsibilities in connection with the planning and implementation of the program shall directly or indirectly be eligible for this program, unless the application for assistance has been reviewed and approved according to applicable California Department of Housing and Community Development (HCD) guidelines. This ineligibility shall continue for one year after an individual's relationship with the city ends.

#### B. Income

Applicant must be low income, defined as having an income that does not exceed 80 percent of the area median income, adjusted for household size. This income figure is established by the Department of Housing and Urban Development (HUD) and periodically adjusted. A "household" means all persons occupying a housing unit as the place of residence. Owner will be required to provide income documentation. (See attached Annual Household Income Definition/Income Limits).

#### C. Applicant Qualifications

1. Applicant must not have been a home owner for at least the last three years, or is a displaced homemaker or single parent who owned a home with a spouse.
2. Loans underwritten by FHA, USDA Rural Development, Fannie Mae, Freddie Mac, or CHFA will be acceptable to establish creditworthiness, repayment ability, and dependability of income. If none of these programs are used, ratios for PITI (principal, interest, taxes and insurance) to income shall not exceed 35%, and the ratio for all debts shall not exceed 42%.
3. Applicant must need assistance of the Program to obtain home ownership. Need will be determined by the City contract administrator, [Consultant], and be based upon Program procedures, requirements of the primary lender and ability of household to meet such requirements.

#### D. Fair Housing

This program will be implemented in ways consistent with the city's commitment to Fair Housing. No person shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with Community Development Block Grant (CDBG) funds on the basis of his or her religion or religious affiliation, age, race, color, ancestry, national origin, sex, marital status, familial status (children), physical or mental disability, sexual orientation, or other arbitrary cause.

### II. PROPERTY ELIGIBILITY

- A. Units to be purchased must be located within current city limits.
- B. Units to be purchased shall be structurally sound and shall meet local code standards. City reserves the right to determine structural soundness and code compliance.
- C. A unit is ineligible if its purchase would result in the displacement of a tenant.
- D. Unit size shall be sufficient to meet the needs of the purchaser household, without overcrowding. Generally, this means not more than two persons per bedroom and living room. Exceptions may be made to accommodate large, immediate families.

- E. Purchase price shall not exceed 95% of the FHA 203b limit for the county where the property is located.
- F. The ratio of property debt to property value shall not exceed 100%. Value to be determined by appraisal acceptable to the City.

### III. PRIMARY LOAN ELIGIBILITY

- A. Loans shall be at a fixed interest rate, for a term not less than 30 years. "Buy-downs" and variable interest rate loans shall not be permitted.
- B. Interest rates, and lender fees and costs shall be reasonable within the marketplace, as determined by the City.

### IV. APPLICATION PROCESS

- A. Home buyer files an application with a primary commercial lender. Lender verifies income and financial eligibility, and determines loan qualifications. Lender then provides documentation of such to [Consultant], with analysis of applicant's need for assistance.
- B. Prior to making an offer on a property the applicant shall provide the seller with an Acquisition Notice which contains the following items:
  - 1. The purchaser has no power of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable agreement; and
  - 2. An estimate of the fair market value of the property.

If an Acquisition Notice will not be provided prior to the purchase offer, the offer shall include a provision that the seller may withdraw from the agreement after this information is provided.

- C. [Consultant] verifies applicant, property and loan eligibility and amount of assistance to be provided consistent with these guidelines. Applicant is placed on 90-day priority list.
- D. [Consultant] staff meets with applicant to provide information relative to the program requirements, the lending process, and home ownership responsibilities.
- E. Request for assistance is submitted to City for approval. Applicant is provided written notification of approval or denial with reason and the appeal procedure for denial.
- F. When primary lender requirements are met, City assistance funds are deposited in escrow, with required closing instructions and documents.
- G. Primary lender loan funds and City assistance are provided concurrently upon close of escrow.
- H. The City shall be named as an additional loss payee on fire and extended coverage insurance for the length of the loan. Flood insurance will be required when the property is located in a 100 year flood zone hazard area.

### V. FINANCING

- A. The City may provide assistance up to 50% of the minimum down payment required by the lender. The City may also provide sufficient assistance, as mortgage principal subsidy, to reduce the monthly payment for PITI to an affordable level of household income

The down payment and/or mortgage subsidy assistance from the City will be provided as a zero interest, deferred payment loan (DPL), not to exceed \$14,000. Loans may be paid, in whole or by periodic payments, at any time without penalty.

- B. Applicant must, as a minimum, be able to provide personal funds equal to two and one-half percent of the purchase price of the house selected, plus the appraisal fee and the cost of the credit report.
  - 1. Except for the minimum requirement stated above, buyer may exempt savings equal to 20% of annual gross income from the purchase transaction. The balance of buyer funds available shall be used in the following order:
  - 2. To the extent possible, after satisfying B. and B.1., above, buyer's funds shall be used for the loan origination fee; discount points; customary buyer closing costs; buyer's customary portion of escrow fees; title insurance; and, the establishment of impound accounts for property taxes and insurance.
  - 3. After 1. and 2., above, are satisfied, any balance of buyer funds may be applied either to reduce the interest rate or to the down payment.
  - 4. If the items in B.2., above, cannot be satisfied with buyer funds, the City may provide a grant, to cover the remaining balance, to a maximum of \$3,000.
- C. Combined loan and grant assistance shall not exceed \$17,000 per applicant.

#### VI. LOAN OR GRANT APPROVAL

- A. All loans and grants are considered on a first-come first-served basis and must be approved by the CDBG Loan Review Committee. In order to obtain CDBG financing, applicants must meet all property and eligibility guidelines in effect at the time of loan approval. Applicants will be provided written notification of approval or denial. Reason for denial will be provided to the applicant in writing.
- B. All City loans shall be secured by a promissory note and a recorded deed of trust, with notice of default, subordinate only to the loan of the primary lender.
- C. City loans are assumable, subject to the assumability of the primary loan, if the household assuming the loan meets Program eligibility requirements and the assumption is approved by the City.

#### VII. RESIDENCY REQUIREMENTS

- A. The unit purchased shall be the principal residence of the purchaser, hereafter referred to as owner.
- B. Owner will be required to submit to the city between January 1 and 15 of each year for the term of the loan:
  - 1. Proof of occupancy in the form of a copy of a current utility bill.
  - 2. Statement of unit's continued use as a residence.
- C. In the event that an owner sells, transfers title, or discontinues residence in the purchased property for any reason, the loan is due and payable, except:
  - 1. If the owner dies, and if the heir to the property lives in the house and is income eligible, the heir may be permitted, upon approval of the City, to assume the loan at the rate and terms the heir qualifies for under current participation guidelines.
  - 2. If the owner dies and the heir is not income eligible, the loan is due and payable.
- D. If an owner wants to convert the property to a rental unit, or any commercial or non-residential use, the loan is due and payable.

VIII. DEFAULT AND FORECLOSURE

If an owner defaults on a loan, and foreclosure procedures are instituted, they shall be carried out according to the CDBG Foreclosure Policy adopted by the city, and attached to these guidelines.

IX. INSURANCE

A. Fire Insurance

The owner shall maintain fire insurance on the property for the duration of the loan(s). This insurance must be an amount adequate to cover all encumbrances on the property. The insurer must identify the City as Loss Payee for the amount of the loan(s). A binder shall be provided to the City.

In the event the owner fails to make the fire insurance premium payments in a timely fashion, the City at its option, may make such payments for a period not to exceed 60 days. The city may, in its discretion and upon the showing of special circumstances, make such premium payments for a longer period of time. Should the City make any payments, it may, in its sole discretion, add such payments to the principal amount that the owner is obligated to repay the city under this program.

B. Flood Insurance

In areas designated by the U.S. Department of Housing and Urban Development (HUD) as flood prone, the owner is required to maintain flood insurance in an amount adequate to secure the DPL. This policy must designate the city as Loss Payee.

X. REFINANCE AND SUBORDINATION

A. The city administrator may approve a request to subordinate a CDBG loan, in order for the owner to refinance the property, under the following conditions:

1. The lien position of the city loan will remain the same or be advanced.
2. The new primary loan is equal to or less than the loan being refinanced.
3. The purpose of the new primary loan is to reduce the interest rate being paid and/or reduce the owner's payment.

B. A request to subordinate which does not meet the three criteria, above, may be submitted to the city council for consideration.

XI. PROGRAM COMPLAINT AND APPEAL PROCEDURE

Complaints concerning the CDBG Program should be made to the Project Contractor first. If unresolved in this manner, the complaint or appeal shall be made in writing and filed with the city. The city will then schedule a meeting with the CDBG Loan Review Committee. Their written response will be made within fifteen (15) working days. If the applicant is not satisfied with the Committee's decision, a request for an appeal may be filed with the city council. Final appeal may be filed in writing with HCD within one year after denial.

XII. AMENDMENTS

Amendments to these guidelines may be made by the city and will be submitted to HCD for approval.

XIII. EXCEPTIONS

Exceptions to these guidelines will require city council and HCD approval.

XIV. ATTACHMENTS

SAMPLE PARTICIPATION GUIDELINES  
Homebuyer Assistance Program

State of California  
City of [XXX] CDBG Programs

The following documents are attached and form a part of these guidelines:

Annual Household Income Definition/Income Limits  
CDBG Foreclosure Policy  
Sample Acquisition Notice to Seller  
Implementation Steps



### ANNUAL HOUSEHOLD INCOME DEFINITION

For the purposes of determining eligibility in accordance with HCD income guidelines, Annual Income will include, for all members of the household:

- 1) Gross wages and salary before deductions.
- 2) Net money income from self-employment.
- 3) Cash income received from such sources as rental units, Social Security benefits, pensions, and periodic income from insurance policy annuities.
- 4) Periodic cash benefits from public assistance and other compensation, including AFDC, SSI, Worker's Compensation, State Disability Insurance and Unemployment benefits.
- 5) Interest earned on savings and investments.

Annual Income will not include:

- 1) Noncash income such as food stamps or vouchers received for the purpose of food or housing.
- 2) Capital gains or losses.
- 3) One time unearned income such as scholarship and fellowship grants; accident, health or casualty insurance proceeds; prizes or gifts; inheritances.
- 4) Payments designated specifically for medical or other costs, foster children or their nondisposable income.
- 5) Income from employment of children under the age of 18.
- 6) Payment for the care of foster children.

This is not meant to be a complete list. Grantee will make the final decision in situations where the classification of income is not clear cut. Any exceptions or other deviations from this definition of annual income will be considered by Grantee. See the CDBG Grant Management Manual, Appendix D, for the controlling Section 8 Income Regulations.

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#### INCOME LIMITS

80% of Tulare and Kings Counties Median Income - 1997  
(Area Median Income - 35,400)

1 Person	- 19,800
2 Persons	- 22,650
3 Persons	- 25,500
4 Persons	- 28,300
5 Persons	- 30,600
6 Persons	- 32,850
7 Persons	- 35,100
8 Persons	- 37,400

### CDBG FORECLOSURE POLICY

#### City As Junior Lienholder

It is the City's policy to prepare and record a "Request for Notice" on all junior liens (any lien after the first position) placed on properties financed by a loan or loans through CDBG program(s).

This document requires any senior lienholder to notify the lender (City) of initiation (recording of a "Notice of Default") of a foreclosure only. This is to alert the junior lienholder that they are to monitor the foreclosure with the senior lienholder.

The junior lienholder may cancel the foreclosure proceedings by "reinstating" the senior lienholder. The reinstatement amount must be obtained by contacting the senior lienholder. This amount will include all delinquent payments, late charges, advances (fire insurance premiums, property taxes, property protection costs, etc.), and foreclosure costs (fees for legal counsel, recordings, certified mail, etc.)

Once the City has the information on the reinstatement amount, staff must then determine if it is cost effective to protect their position by reinstating the senior lienholder, keeping them current by submitting a monthly payment thereafter, foreclosing on the property possibly resulting in owning the property at the end of foreclosure, protecting the property against vandalism, and paying marketing costs (readying the home for marketing, paying for yard maintenance, paying a real estate broker a sales commission).

If the City decides to reinstate, the senior lienholder will accept the amount to reinstate the loan up until five (5) days prior to the set "foreclosure sale date." This "foreclosure sale date" usually occurs about four (4) to six (6) months from the date of recording of the "Notice of Default." If the City fails to reinstate the senior lienholder before five (5) days prior to the foreclosure sale date, the senior lienholder would then require a full pay off of the balance, plus costs, to cancel foreclosure. If the City determines the reinstatement and maintenance of the property not to be cost effective and allows the senior lienholder to complete foreclosure, the City's lien may be eliminated due to insufficient sales proceeds.

#### City As Senior Lienholder

When the City is in a first position, or the senior lienholder, active collection efforts will begin on any loan that is 31 or more days in arrears. Attempts will be made to assist the homeowner in bringing and keeping the loan current. These attempts will be conveyed in

an increasingly urgent manner until loan payments have reached 90 days in arrears, at which time the City may consider foreclosure. City staff will consider the following factors before initiating foreclosure:

- Can the loan be cured (brought current or paid off) by the owner without foreclosure?
- Can the owner refinance with a commercial lender and pay off the City?
- Can the owner sell the property and pay off the City?
- Does the balance warrant foreclosure? (If the balance is under \$5,000, the expense to foreclose may not be worth pursuing.)

- Will the sales price of home "as is" cover the principal balance owing, necessary advances, (maintain fire insurance, maintain or bring current delinquent property taxes, monthly yard maintenance, periodic inspections of property to prevent vandalism, etc.) foreclosure, and marketing costs?

If the balance is substantial and all of the above factors have been considered, the City may opt to initiate foreclosure. The owner must receive, by certified mail, a thirty-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to the City to prevent foreclosure (such as, funds to bring a delinquent BMIR current or pay off a DPL).

At the end of thirty days, the City should contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the owner and junior lienholders. The service will advise the City of all required documentation to initiate foreclosure (Note and Deed of Trust usually) and funds required from the owner to cancel foreclosure proceedings. The service will keep the City informed of the progress of the foreclosure proceedings.

When the process is completed, and the property has "reverted to the beneficiary" at the foreclosure sale, the City would then contact a real estate broker to market the home.

CITY OF \_\_\_\_\_  
HOME BUYER ASSISTANCE PROGRAM

IMPLEMENTATION STEPS

- A. Participant works with lender of choice to qualify for real estate loan.
- B. Participant works with real estate agent to select home. Preference will be given to vacant or owner occupied homes rather than tenant occupied.
- C. Participant selects home and enters into a purchase contract. Lender provides (Program Administrator) with a copy of:
  - real estate sales contract
  - residential loan application
  - proof of personal funds for participation in program
  - credit report
  - verified income documentation
  - disclosure statement
  - breakdown of closing costs
  - structural pest control clearance
  - appraisal with photos
  - escrow instructions
  - preliminary title report
- D. (Program Administrator) reviews paper work to determine program eligibility and financing affordability for participant etc.
- E. (Program Administrator) staff meets with qualified applicant to provide information relative to the program requirements, the lending process, and home ownership responsibilities.
- F. (Program Administrator) has home inspected (if necessary) to meet Section 8 Housing Conditions. Notice of any deficiencies or needed corrections given to participant's real estate agent, with recommended course of action.
- G. (Program Administrator) requests loan approval from City Administrator. Following loan approval, (Program Administrator) prepares Deed of Trust, Promissory Note, Notice of Default, Grant Agreement, Owner Occupant Agreement with City, requests checks and deposits same into escrow.
- H. Escrow company furnishes (Program Administrator) with proof of documents to be recorded, and any escrow close out information. After receipt of recorded documents, (Program Administrator) closes out city file.

Sample Acquisition Notice to Seller

DECLARATION

Inasmuch as the purchaser of this property may be assisted with federal funds through the Home Ownership Partnership Program, prior to making an offer to purchase, purchaser shall provide seller with a statement of the following provisions:

1. Purchaser has no power of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable agreement; and
2. Purchaser's offer is an estimate of the fair market value of the property, to be finally determined by professional appraisal; and
3. If the seller is not provided with a statement of the above two provisions prior to the purchase offer, the seller may withdraw from the agreement after this information is provided.

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

ACKNOWLEDGMENT

I (We) acknowledge receipt of this declaration ( ) prior to; ( ) after presentation of the purchase offer. If received after presentation of the purchase offer, I (We) choose ( ) not to withdraw ( ) to withdraw, from the agreement.

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Date

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Date

Sample Acquisition Notice to Seller, R ev. 10/97